

[[note: authority is non-profit, but keeps all revenues, and each budget shall
commit Excess Revenue to the next item of its New or Rehabilitated
Infrastructure Priority List.

Annual expenditure: 5% to general fund for administrative or indirect costs

COUNCIL DRAFT TABLE

OF CONTENTS

TITLE _ _ _ _ _
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HOPI PUBLIC UTILITIES COMMISSION AND HOPI PUBLIC UTILITY AUTHORITY ACT

<u>SECTION</u>	HEADING	<u>PAGE</u>
Sec. 1	Definitions	
Sec. 2	Adoption & Amendment	
Sec. 3	Sovereign Immunity	
Sec. 4	Applicability	
Sec. 5	Effective Date	
Sec. 6	Creation of HPUA	

Sec. 7	Hopi Public Utility Commission
Sec. 7(a)	Creation
Sec. 7(b)	Composition & Appointment
Sec. 7(c)	Term of Office
Sec. 7(d)	Removal
Sec. 7(e)	Eligibility
Sec. 7 (f)	Compensation
Sec. 8	General Powers and Duties of the Commission
Sec. 9	Public Meetings and Rate Increases
Sec. 10	Consumer Grievances and Appeals
Sec. 11	Consumer Appeals Hearings
Sec. 12	Utility Complaints
Sec. 13	Budgeting of Funds
Sec. 14	Self-Governing Hopi Villages

STATEMENT OF PURPOSE

The purpose of this Act is to create an Authority to manage, operate, and maintain utility systems for the Hopi Tribe, the several self-governing Hopi Villages upon request, and other approved rate-payers and participants in order to provide safe and reliable services to the people at reasonable costs, and to create a Commission to regulate the activities of the Hopi Public Utility Authority and any other public utility providing public services with the territory or jurisdiction of the Hopi Tribe.

Sec. 1. DEFINITIONS

1) Approved Project Priority List. The term Approved Project Priority List shall refer to the annual list of construction, replacement, repair, or delivery projects approved by the Hopi Tribal Council.

2) Direct HPUA Customer. The term Direct HPUA Customer shall refer to any customer purchasing utility services directly from HPUA, including any self-governing Village with its own Village Public Utility and any village resident customer receiving services directly from HPUA at the request of the Village, but shall not refer to customers receiving services directly from a self-governing Village Public Utility.

3) Excess Revenue. The term Excess Revenue shall mean revenue held or receivable by the HPUA in excess of the amount of revenues necessary to complete all Projects on the Approved Project Priority List, but which shall not include the Annual Five Percent Administrative Cost.

4) Hopi Public Utility Authority. The Hopi Public Utility Authority shall refer to the entity established except telecommunication to provide public services on behalf of the Hopi Tribe.

5) Hopi Public Utility Commission. The Hopi Public Utility Commission shall refer to the entity established by the law to regulate all public services and public service providers within the territory and jurisdiction of the Hopi Tribe.

6) Indirect HPUA Customer. The term Indirect HPUA Customer shall refer to a customer receiving public utility services directly from a Village Public Utility.

7) Proposed Projects Priority List. The term Proposed Projects Priority List shall mean a list of projects compiled and proposed by the HPUA in conjunction with the Annual Budget for construction, replacement, repair, or delivery projects.

8) Public Utility Services. The term Public Services shall include the production, transmission, delivery, or furnishing of heat, light, water, power, waste, sanitary services, and telecommunications.

9) Public Utility. The term Public Utility shall mean every corporation, company, person, association, or their lessees, or trustees created or receivers appointed by any court, for the production, transmission, delivery of Public Services for persons living within the territory or jurisdiction of the Hopi Tribe or Villages.

10) Village Public Utility. The term Village Utility shall mean any public utility authority established by any self-governing Village for the purposes of providing public utility services to a Village.

Sec. 2. ADOPTION and AMENDMENT

- (a) This law is adopted under the authority of Article _____ of the Constitution of the Hopi Tribe.

- (b) The Tribal Council, acting in accordance with the constitution and legislative rules of the Hopi Tribe, may amend this law.

Sec 3. SOVEREIGN IMMUNITY

This act shall not be construed to waive the sovereign immunity of the Hopi Tribe in any Court from monetary damage claims, or to waive any other immunity or privilege of the Hopi Tribe.

Sec. 4. APPLICABILITY

This law shall apply to the Hopi Public Utility Commission, the Hopi Public Utility Authority, any other public utility providing services within the territory or jurisdiction of the Hopi Tribe, and all persons within the territory or jurisdiction of the Hopi Tribe.

Sec. 5. EFFECTIVE DATE

This Title of the Hopi Code shall be effective upon enactment.

Sec 6. CREATION OF HOPI PUBLIC UTILITIES AUTHORITY

- (a) There is hereby created the Hopi Public Utilities Authority ("HPUA").
- (b) The HPUA shall provide public service of water, sewer, solid waste, sanitation, electricity and natural gas to any Direct HPUA Customer, throughout the Hopi territory on behalf of the Hopi Tribe. The HPUA shall recognize that each self-governing Village has the right to establish its own Village Public Utility and shall provide Public Utility Services to each Village, or Village customers as determined by the governing body of each Village. The HPUA shall not provide telecommunication services presenting provided by Hopi Telecommunications.
- (c) The HPUA shall be responsible for the management, operation, maintenance, and repair of all public utilities and public utilities infrastructure owned by the Tribe, including but not limited to power, communications, sanitation, or water transmission, delivery, disposal, or storage, including any valves, main lines, hydrants, treatment facilities, pumping stations, pumps, tanks, transfer stations, transmission lines, including any roads necessary for public service activities.
- (d) The HPUA shall manage its own rate collection and accounting operation, including payments from each self-governing Village or Village Public Utility and all Direct HPUA Customers. The HPUA shall collect payments from the appropriate Village or Village Public Utility even if the Village or Village Public Utility has failed to collect from its own customers.
- (e) The HPUA shall not be responsible for rate collection and accounting for payments made by Indirect HPUA Customers to the appropriate Village or Village Public Utility.
- (f) The HPUA shall have the authority to contract for repair services on behalf of the HPUA, but shall not have the authority to contract for replacement services unless explicitly authorized by the HTC.

(g) The HPUA shall not be responsible for the management, operation, repair, or maintenance, or any costs associated with any Village Utility or Village Utility infrastructure established and operated by any self-governing Village.

(h) The HPUA shall carry liability and damages insurances, and any other type of insurance required by the HPUC. The scope of the insurance is limited to the scope of the authority of the HPUC.

(i) The HPUA shall timely propose its own budget for inclusion in the Annual Budget of the Tribe.

(j) The employees of the HPUA shall be regulated by the employment policies of the HR Division of the Hopi Tribe.

Sec. 7. HOPI PUBLIC UTILITIES COMMISSION

(a) There is hereby created the Hopi Public Utilities Commission ("HPUC").

(b) COMPOSITION AND APPOINTMENT

(1) The HPUC shall consist of five (5) Commissioners, including one President and four Members.

(2) The Council shall select by majority vote the four Members of the Commission and the Chairperson shall nominate, subject to approval by the Council, the President of the Commission. If the Council fails to approve or disapprove the Chairperson's selection within thirty days, the selection shall be deemed approved.

(3) Any vacancy in the position of Member or President of the Commission through death, resignation, or otherwise, shall be filled in accordance to subparagraph (2). The newly appointed President or Member shall serve the remainder of the vacating Commissioner's term.

(c) TERM OF OFFICE. The President shall serve four (4) year term. The four members shall serve four (4) year terms unless sooner resigned or removed. The first Commission shall serve staggered terms, with two Members serving four year terms and two Members serving two year terms, as determined by the Council.

(d) REMOVAL

(1) The Council may remove the Commission President or any Commission Member for reasonable cause.

(2) The Commission President or any Member shall have the right to appeal the removal in writing to the Hopi Court.

- (3) In any removal proceeding by the Council, a Commissioner shall be afforded due process, including the right to be represented and to provide testimony and evidence, in a public hearing.

(e) ELIGIBILITY

- (1) Commissioners shall consist of at least three residential utility consumers and at least one business utility consumer.
 - (2) Commissioners must be at least 25 years of age and have a minimum high school education level.
 - (3) No member of the Commission shall be an elected tribal official.
- (f) COMPENSATION Commissioners of the HPUC shall be compensated for each meeting. Such compensation shall not exceed One Hundred and Fifty dollars (\$150.00) for each regular monthly meeting, One Hundred Dollars (\$100.00) for each special meeting (not to exceed two meetings per month), and one hundred dollars (\$100) for each hearing conducted pursuant to Section 10 of this Title.

Sec. 8. GENERAL POWERS AND DUTIES OF THE HPUC

- (a) The HPUC shall have the power to regulate the rates, connection charges, and other fees charged by HPUA and any other Public Utility, not owned by the Tribe. Further, the HPUC will not set rates for any self-contained public utilities or Villages. The HPUC shall on an annual basis review utility rates, connection charges, and any other fee or charge assessed by any Public Utility to determine reasonableness and equity of such charges based upon the public interest, essential operating requirements of the public utility, and similar rates and charges of comparable communities and utilities.
- (b) The Commission shall also consider the following factors in determining the reasonableness and equity of rates, charges, and fees:
 - (1) promoting the establishment and viability of Village Public Utilities
 - (2) competition to keep consumer costs down;
 - (3) consumer choice;
 - (4) quality of life;
 - (5) reliability of service; and
 - (6) efficiency and productivity.
- (c) The Commission President shall call at least two public hearings before setting or adjusting any rate, charge, or fee increase proposed by the Commission. Any rate, charge, or fee increase set by the Commission shall not take effect for ninety (90) days.
- (d) After proposing any adjustment to rates, charges, or fees, and prior to adopting such rates, charges, or fees, the Commission shall notify the Chairman and each Member of the Hopi Tribal Council of any proposed adjustments.
- (e) The Commission shall have the authority to monitor and order, upon its own

findings or upon a grievance filed by a ratepayer maintenance and repairs to the utility infrastructure of HPUA or any other Public Utility.

- (f) The Council reserves the authority to select public utility providers and to negotiate or set rates, charges, or fees by written resolution without regard to the Commission or this Chapter.
- (g) The HPUC shall timely propose its own budget for inclusion in the Annual Budget of the Tribe.

Sec. 9. PUBLIC MEETINGS & RATE INCREASES

- (a) The Commission shall hold one Regular Meeting every calendar month. The Commission shall hold Special Meetings as called by the President or any three Members.
- (b) The Commission shall post notice of public meetings in conspicuous places and least five (5) days prior to the meeting and shall state the time, place, agenda, and a written explanation for such meeting.

Sec. 10. CONSUMER GRIEVANCES AND APPEALS

- (a) Any Direct or Indirect HPUA Customer may file a Grievance with the Commission aggrieving any rate, toll, charge, schedule, joint rate, regulation, measurement, or any other action or practice relating to the provision of utility services, or if the provision of service is unreasonable, inadequate, or discriminatory.
- (b) Any Grievance shall be in writing and shall contain sufficient details to notify the Commission of the nature of the matter.
- (c) The Commission shall duly investigate every Grievance.
- (d) The Commission shall notify HPUA or other Public Utility prior to any hearing being conducted to resolve a Grievance.

Sec. 11. CONSUMER APPEALS HEARINGS

- (a) Any Direct or Indirect HPUA Customer shall have the right to file an Appeal with the Commission on any action or decision made by the HPUC, HPUA, or other Public Utility that adversely affects the customer.
- (b) Any Appeal shall be in writing and shall be of sufficient detail to provide the Commission with an adequate understanding of the decision being appealed.
- (c) The Commission shall provide at least ten (10) days of notice to the customer filing the Appeal and to the HPUA or the appropriate Public Utility of the time, place, of any hearing on the Appeal.

- (d) Both the appropriate Public Utility and the customer filing the Appeal shall have an opportunity to be heard.
- (e) The Commission may issue subpoenas at the request of either party which shall be enforceable by Hopi Law Enforcement and the non-compliance of which may be subject to a Order of Contempt of Court.
- (f) The Commission shall issue its Final Ruling, in writing, to the parties within thirty (30) days of the hearing date.
- (g) The Final Ruling of the Commission shall be final for the purposes of Judicial Review.

Sec. 12. UTILITY COMPLAINTS

- (a) Any Public Utility may file a Grievance or Appeal with the Commission on any matter affecting its own product or service.
- (b) The Commission may investigate the complaint as it considers necessary and issue a final determination, in writing, to the Public Utility.

Sec. 13. BUDGETING OF FUNDS

There is hereby authorized to be appropriated an amount necessary to effectuate the purpose of this law, consistent with the Hopi Annual Budget.

Sec. 14. SELF-GOVERNING HOPI VILLAGES

Each self-governing Village as provided in the Constitution has the authority to establish its own Village Public Utility to provide public services for the Village; provided, the scope of the power and activities of any public service authority and utility of a Village shall be limited to the territory, persons, and jurisdiction of that Village, unless otherwise consistent with this Title.